

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

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**OCT 28 2004**

**PATRICK FISHER**  
Clerk

LEVI LOVE,

Plaintiff-Appellant,

v.

ROGER WERHOLTZ, Secretary of  
Corrections; CHARLES SIMMONS,  
Warden, El Dorado Correctional  
Facility; LOUIS BRUCE, Warden,  
Hutchinson Correctional Facility;  
DON LANGFORD, Hutchinson  
Correctional Facility; (FNU)  
SCHLETZBAUM, Disciplinary  
Hearing Officer, Hutchinson  
Correctional Facility; ELIZABETH  
MOSCORRO, Captain, Hutchinson  
Correctional Facility; M.  
VANHOOSE, Unit Team Manager; R.  
HICKS, Unit Team; D.  
McCONAGHY, Unit Team; M.  
KROEKER, Unit Team; P. KEEN,  
Mail Review Officer,

Defendants-Appellees.

No. 04-3325

(Dist. of Kan.)

(D.C. No. 03-CV-3291-GTV)

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**ORDER AND JUDGMENT \***

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\* This order is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders; nevertheless, an order may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before **KELLY , HENRY , and TYMKOVICH** , Circuit Judges. \*\*

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Levi Love appeals the dismissal of his civil complaint for failure to pay the filing fee. We affirm.

### BACKGROUND

Love filed a complaint in forma pauperis (IFP) alleging that Appellees had violated several of his constitutional rights. Love then moved to obtain discovery related to his claims and also moved to stay proceedings until he exhausted all administrative remedies related to his discovery requests.

On February 24, 2004, the district court, pursuant to 28 U.S.C. § 1915(b)(1) (Supp. 2004), ordered Love to pay a \$24.00 filing fee and to show cause why the complaint should not be dismissed within thirty days. The court went on to deny Love's motion for discovery and motion to stay. After Love failed to pay the requisite filing fee within thirty days of the order, the court dismissed his complaint without prejudice and denied his motion to proceed IFP.

Love then appealed the court's dismissal of his complaint for failure to pay the filing fee and moved to proceed IFP. Because Love paid the filing fee on August 26, 2004, the district court granted his request to proceed on appeal IFP.

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\*\* After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. *See* Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

## ANALYSIS

A court may dismiss a complaint for failing to comply with a court order. *See Cosby v. Meadors* , 351 F.3d 1324, 1326 (10th Cir. 2003). We review the district court's dismissal of Love's complaint for abuse of discretion. *See id.*

A prisoner seeking to proceed IFP, while not obligated to pay the full amount of a filing fee at the time of a filing, is nonetheless required to pay a portion of that fee upon filing. *See* 28 U.S.C. § 1915(b)(1) (Supp. 2004) (requiring the court to assess and collect an initial fee of twenty percent of either the monthly deposits in a prisoner's account or the average monthly balance of the account). Pursuant to this requirement, the court ordered Love to pay twenty percent of his average monthly balance, or \$24.00, within thirty days of its order or face dismissal. Although Love eventually paid the \$24.00 fee, he did so five months too late. Thus, he failed to comply with the court's order and the court had the authority to dismiss his complaint. Accordingly, we affirm the dismissal of Love's complaint without prejudice.

We remind Love that he is required to continue to make payments until all filing fees, including the appellate filing fee, are paid. Love's complaint was dismissed without prejudice, thus nothing in this order and judgment reflects our opinion of the merits.

WE AFFIRM.

Entered for the Court

Timothy M. Tymkovich  
Circuit Judge